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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/708,627	03/16/2004	Clint Garwood	36907/400190	2626

27717 7590 07/07/2004

SEYFARTH SHAW
55 EAST MONROE STREET
SUITE 4200
CHICAGO, IL 60603-5803

EXAMINER	
OLSON, LARS A	

ART UNIT	PAPER NUMBER
3617	

DATE MAILED: 07/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/708,627	GARWOOD, CLINT	
	Examiner	Art Unit	
	Lars A Olson	3617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ____ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-19* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-19* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *16 March 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *03162004*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-9 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9 of U.S. Patent No. 6,736,688. Although the conflicting claims are not identical, they are not patentably distinct from each other because they both disclose an apparatus that is comprised of a body with a front, back and two opposed sides, and a propulsion structure that is coupled to said body with a pivoting structure, an elongated rod member with an upper portion and a lower portion, and a fin member that is pivotally coupled intermediate said upper and lower portions. The only difference between the claims of US 6,736,688 and those of the pending application is that the pending claims describe a watercraft apparatus that includes a propulsion structure that is coupled to a body with a pivoting structure, instead of a manually propelled personal flotation apparatus with a propulsion structure

that is pivotally coupled to a body with a pivoting structure. It would be considered obvious by one of ordinary skill in the art to describe a personal flotation apparatus as a watercraft, since both are devices that are capable of floating on a body of water.

3. Claims 10-18 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9 of U.S. Patent No. 6,736,688. Although the conflicting claims are not identical, they are not patentably distinct from each other because they both disclose a propulsion structure with an elongated rod member that is coupled to an object and has an upper portion and a lower portion, and a fin member that is pivotally coupled to said rod member intermediate said upper and lower portions. The only difference between the claims of US 6,736,688 and those of the pending application is that the pending claims describe a propulsion structure that is coupled to a watercraft, instead of a propulsion structure that is pivotally coupled to a body of a manually propelled personal flotation apparatus. It would be considered obvious by one of ordinary skill in the art to couple a propulsion structure to either a watercraft or a manually propelled personal flotation apparatus, since both require a means for propulsion in order to function on a body of water.

4. Claim 19 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 10 of U.S. Patent No. 6,736,688. Although the conflicting claims are not identical, they are not patentably distinct from each other because they both disclose a method for propelling a watercraft that is comprised of the steps of coupling a propulsion structure to said watercraft, and moving a rod from a forward position to a rearward position in order to cause water to resist

movement of a fin member and provide forward propulsion to said watercraft. The only difference between claim 10 of US 6,736,688 and claim 19 of the pending application is that claim 19 discloses a method for propelling a watercraft that includes the step of coupling a propulsion structure with a rod that is movable between a forward and a rearward position, instead of pivotally coupling a propulsion structure with a rod that is movable between a forward and a rearward position. It would be considered obvious by one of ordinary skill in the art to couple a rod to a watercraft, where said rod is movable between forward and rearward positions, in a pivotal manner.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

6. Any inquiry concerning this communication from the examiner should be directed to Exr. Lars Olson whose telephone number is (703) 308-9807.

lo

June 29, 2004

LARS A. OLSON
PATENT EXAMINER

Lars Olson
6/29/04